

**REMARKS**

The Applicants appreciatively acknowledge the removal of several rejections from the previous Office Action. Claims 40-42, and 50-60 are currently pending to which the Examiner has presented a single rejection:

- I. Claims 40-42 and 50-56 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Wenk et al., *J. Neurosci.* 14:5986-5995 (1994).

**I. The Claims Are Not Anticipated**

As the Examiner is well aware, a single reference must disclose each limitation of a claim in order for that reference to anticipate the claim. *Atlas Powder Co. v. E.I. du Pont De Nemours & Co.*, 224 U.S.P.Q. 409, 411 (Fed. Cir. 1984). This criterion is not met with the Wenk et al. reference. Further, the Examiner is reminded that, as method claims, all claim terms (functional and otherwise) must be given full patentable weight.

First, the Examiner has not recognized that the Applicants' multivariate outcome measurements comprise univariate Z scores. Univariate Z scores are not taught in Wenk et al.<sup>1</sup> Wenk et al. merely measures absolute EEG power in either the frontal or parietal brain region. The Applicants' Specification teaches that absolute power is a raw univariate measure:

[0063] Although not intended as a limitation of the invention, the relationship between these univariate measurements and brain activity is believed to be as follows. Absolute power is the average amount of power in each frequency band and in the total frequency spectrum of the artifact-free EEG information from each electrode, and is believed to be a measure of the strength of brain electrical activity.

*Applicant's Specification Publication Number 2004/0059241* [emphasis added]. Consequently, Wenk et al. presentation of absolute power data does not anticipate the Applicants' 'multivariate outcome measurements':

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<sup>1</sup> Notably, the Examiner's arguments are silent regarding this claim element.

[0045] "Multivariate outcome measurements" are quantitative output measurements collected from combinations of univariate neurophysiologic measurements collected from various regions of the brain.

*Applicant's Specification Publication Number 2004/0059241* [emphasis added]. The Examiner has not shown how, or where, Wenk et al. combines univariate neurophysiologic measurements from various regions of the brain to produce a multivariate outcome measurement. For this reason alone, the Examiner is respectfully requested to withdraw the present rejection.

Second, the Applicants point out that Wenk et al. does not teach a method to determine drug efficacy by comparing differences between multivariate EEG data. On the contrary, the Examiner admits that Wenk et al. relies upon histological procedures to provide evidence of drug efficacy:

Histological and biochemical investigations confirmed the effectiveness and specificity of the 192 IgG-saporin ...

*Office Action pg 3.* Furthermore, the Examiner has failed to realize that 192 IgG-saporin is a toxin not a medication:

In the present study, basal forebrain cholinergic cells were selectively destroyed by injection of an antineuronal immunotoxin ... This compound consists of a monoclonal antibody (192 IgG) to the low-affinity nerve growth factor (NGF) receptor that has been armed with the ribosome-inactivating protein saporin.

*Wenk et al., pg 5987 lhc.* This compound is not consistent with the Applicants' definition of "medication" provided to the Examiner in the last Office Action response. Consequently, Wenk et al. is not a proper reference for teaching a method to determine medication efficacy.

Nonetheless, without acquiescing to the Examiner's argument but to further the prosecution, and hereby expressly reserving the right to prosecute the original (or similar) claims in the future, Applicants have amended Claims 40 and 54 to clarify that drug efficacy is determined using an identified difference between the first multivariate outcome measurement and the second multivariate outcome measurement. This amendment is made not to acquiesce to the Examiner's argument but only to further the

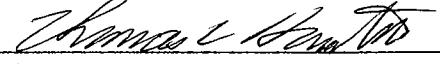
Applicants' business interests, better define one embodiment and expedite the prosecution of this application.

The Applicants respectfully request that the Examiner withdraw the present rejection.

### **CONCLUSION**

The Applicants believe that the arguments and claim amendments set forth above traverse the Examiner's rejections and, therefore, request that all grounds for rejection be withdrawn for the reasons set above. Should the Examiner believe that a telephone interview would aid in the prosecution of this application, the Applicants encourage the Examiner to call the undersigned collect at 617.984.0616.

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Thomas C. Howerton  
Registration No. 48,650

MEDLEN & CARROLL, LLP  
101 Howard Street, Suite 350  
San Francisco, California 94105  
617.984.0616